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Zoning By-law Approvals in Municipalities with an Official Plan in Effect

A planning guideline for
regulations made under
section 35 (24) of The
Planning Act

September 1979

Operations and Development Control Branch



Ministry of
Housing


Ontario

39 Miscellaneous

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1. BACKGROUND

Under the Provisions of section 35(24) of The Planning Act, the Lieutenant Governor-in-Council has made a regulation that provides procedures for zoning by-laws to come into effect without Ontario Municipal Board approval in municipalities where an official plan is in effect. This planning guideline has been prepared for municipal councils and clerks. It explains the administrative procedures for using the new regulation.

2. THE ZONING APPROVAL PROCESS

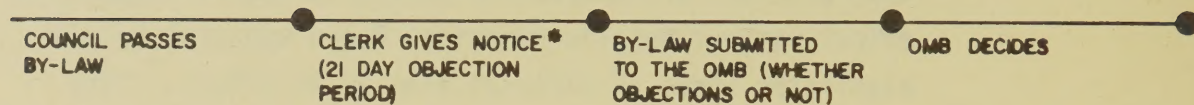
2.1 The Process - In the Past and Today

Before this regulation came into effect, all zoning by-laws passed under section 35 of The Planning Act were approved by the Ontario Municipal Board. Now municipalities with an official plan in effect can either submit their zoning by-laws to the Ontario Municipal Board for approval or they can proceed in accordance with the regulation. The regulation allows the zoning by-law to come into effect without Ontario Municipal Board approval provided that no objections are received. Figure 1 shows the by-law approval process for zoning by-laws submitted to the Ontario Municipal Board. Those municipalities where no official plan is in effect must submit their zoning by-laws to the Ontario Municipal Board. Figure 2 shows the process under the regulation.

The new regulation is intended to:

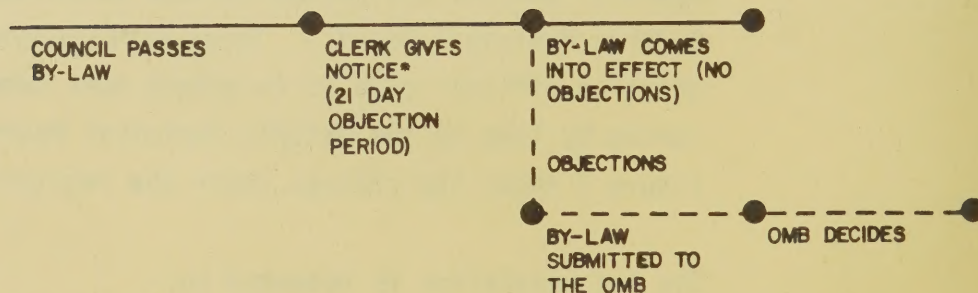
- . speed up the approval process for by-laws that conform to an approved official plan
- . reduce the workload of the OMB so that it is free to consider other matters.

FIG. 1. ZONING BY-LAW APPROVAL PROCESS - Municipalities with no official plan



* Notice in accordance with OMB rules of procedure for zoning by-law applications

FIG. 2. ZONING BY-LAW APPROVAL PROCESS - S.35 (25) Of The Planning Act (municipalities with approved official plans)



* Notice in accordance with regulations made under S.35 (24) of The Planning Act (includes completion of schedules 2,3, and 4 in Form 1)

2.2 Municipalities that are Eligible

Section 35(25) of The Planning Act states that the regulation may be used "where an official plan is in effect in a municipality ..."

approved
official
plan

If a municipality wants to use the regulation, the official plan must be in effect, i.e., approved by the Minister, his delegated approval authority, or the Ontario Municipal Board.

type of
plan

The official plan may be a local official plan. It may also be a regional or county plan. It may have provisions that apply to either the whole or only part of the municipality.

2.3 Using the Regulation

Municipalities with approved official plans can choose not to use the regulation and submit their zoning by-laws to the Ontario Municipal Board for approval. Even though municipalities with approved official plans have the option, we suggest municipalities eligible to use the regulations do so whenever possible.

situ-
ations
where not
appropriate

However, there are certain situations where it is not appropriate to proceed under this regulation.

Comprehensive Zoning By-laws

Since most comprehensive zoning by-laws receive some objections, we recommend that they be submitted to the Ontario Municipal Board for approval. All zoning by-law amendments to comprehensive by-laws that have not yet received OMB approval should also be submitted to the

Board and not proceed through this regulation.

By-laws to Implement Plans of Subdivision

This alternative approval process is not appropriate before a subdivision plan has received draft approval under section 33(5) of The Planning Act. Prior to draft approval, the draft plan including lot lines, setbacks, etc., is subject to change. Zoning by-laws that establish use, density, and development standards should not be passed by council until after draft approval.

Once draft approval has been given, the use of the regulation is fine. After the by-law comes into effect under the regulation, a copy of the certificate prepared under section 35(27) of The Planning Act, (also see section 5.2, "The Certificate") should be forwarded to the office processing the draft plan of subdivision. Similarly, if an objection is lodged to such a by-law, the subdivision approval authority should also be notified.

By-laws to Implement Official Plan Amendments

Section 19(2) of The Planning Act allows a municipal council to adopt an implementing zoning by-law at the same time it adopts the official plan amendment. If a municipality chooses to adopt both the by-law and official plan amendment together, then the zoning by-law should be submitted to the Ontario Municipal Board for approval and not be processed under the regulation. Since changes to the official plan amendment before it is approved can affect the text of the zoning by-law, if the municipality wants to use the regulation, notice (Form 1) should not be given until the official plan amendment is approved.

3. PROCEEDING UNDER THE REGULATION

3.1 Notice - Form 1

If council has decided to use the regulation, the clerk must give notice of passing of the by-law using Form 1 of the regulation.

caution

Form 1 is very similar to the notice form used when a by-law is submitted to the Ontario Municipal Board for approval. If the council is proceeding under section 35(25) of The Planning Act, then it must use the correct notice form or it may jeopardize the legality of the by-law.

3.2 The Schedules

Certain schedules must be attached to Form 1.

3.2.1 Schedule 1 - True Copy of the By-law

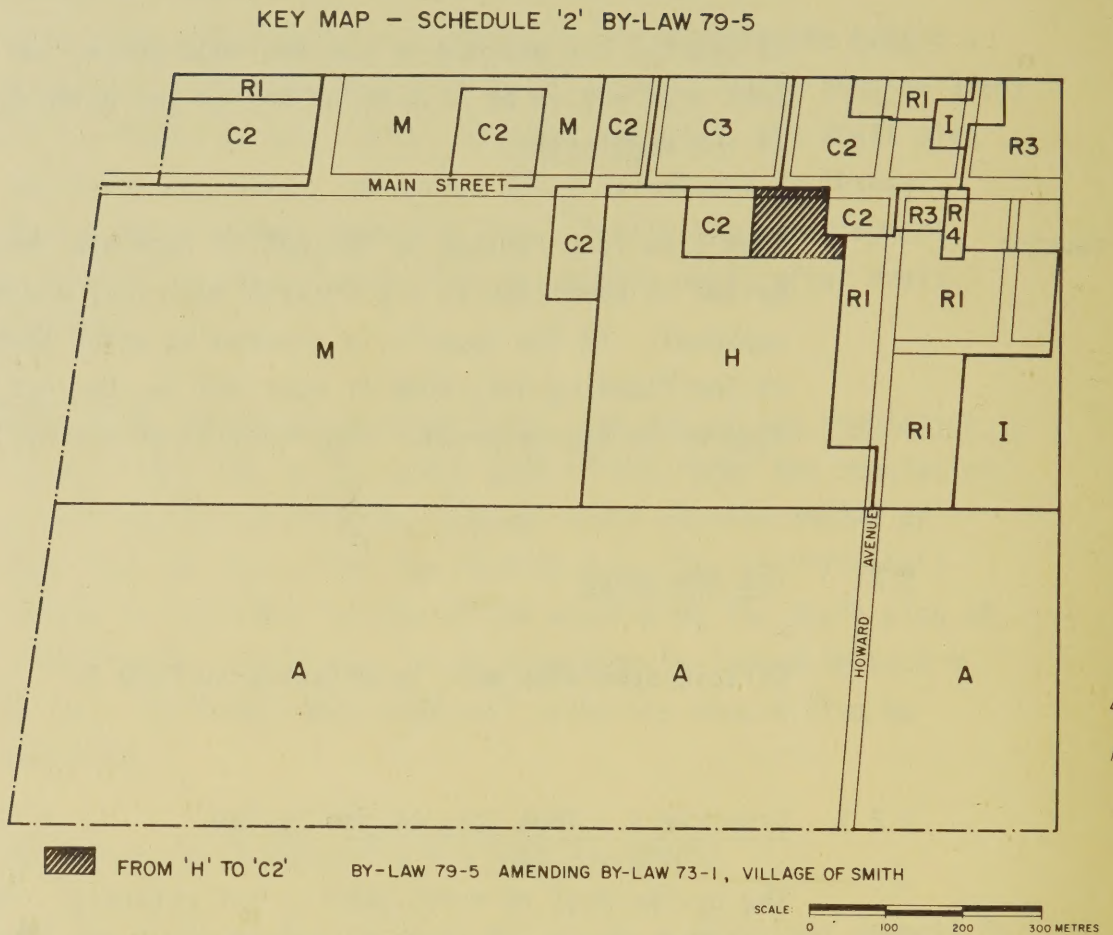
The by-law must be reproduced in its entirety. There is no provision for a summary. It must include the title "Schedule 1" and the explanation that it is a true copy.

3.2.2 Schedule 2 - The Key Map

The key map helps those receiving notice to locate the property. The map should be drawn to scale; however, no specific scale size is required. It is suggested that the key map include:

- . north arrow
- . major roads
- . identify the lands to be rezoned

Here is an example:



In certain situations, such as a change to the written text of the by-law, no key map will be necessary because the text change will apply to properties throughout the municipality. In this situation, Schedule 2 should specify "key map showing location of lands affected by By-law is not necessary because this by-law is for a change to the text of By-law and will affect properties throughout the municipality".

3.2.3 Schedule 3 - Statement of Conformity to Official Plan

who
prepares

Schedule 3 is completed by the chief planning officer of the municipality or where there is no chief planning officer, by the clerk.

chief
planning
officer

The chief planning officer of the municipality is the senior professional planner in the local or area municipality. In the regional municipalities of Haldimand-Norfolk and Sudbury, it is the senior professional planner of the region.

clerk

If there is no chief planning officer, the clerk of the local or area municipality completes the schedule. The regional clerk completes it in the Regional Municipalities of Sudbury and Haldimand-Norfolk.

content -
statement
of
conformity

Schedule 3 has two purposes. First of all, it is a statement of conformity to the official plan. The statement of conformity does not have to specify how the by-law conforms - just that it does. If the chief planning officer or the clerk wishes to elaborate, he may do so, but it is optional.

statement
of purpose
and effect

The statement of purpose and effect explains what the by-law does. The explanation should be clear, concise and in layman's rather than technical language or jargon.

An example could be:

"The by-law rezones the parcel of land at the intersection of Willow Street and Dale Avenue from single family residential to multiple family residential. The multiple family residential zone permits a maximum of a three storey walk-up apartment to locate on the site. There will be one driveway on Dale Avenue."

3.2.4 Schedule 4 - Statement of Conformity -
Regional Official Plan (Schedule No. 4)

where
applicable

Schedule 4 is to be completed by regional municipalities (including district and metropolitan municipalities) that have approved official plans. It is also applicable to counties if the county is the designated municipality in a planning area that has an approved official plan. It is not applicable to the Regional Municipalities of Haldimand-Norfolk and Sudbury.

This statement will be completed when the by-law has received third reading by municipal council. The Minister of Housing has notified regions and counties that these statements should be issued as quickly as possible to avoid delays in circulating the notice.

If the municipality has difficulty in obtaining such a statement, the by-law will have to be submitted to the Ontario Municipal Board for approval and notice given in accordance with the Board's Rules of Procedure.

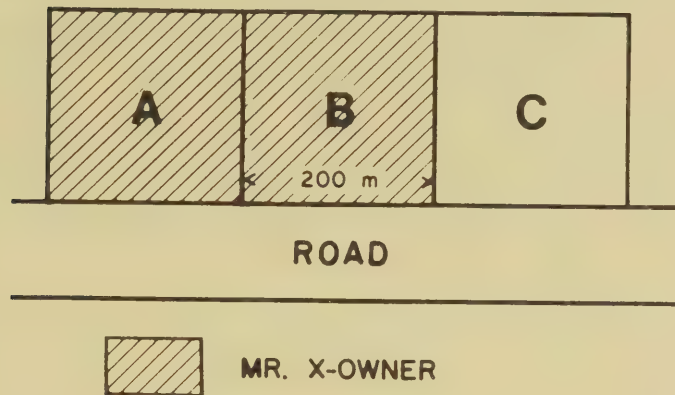
3.3 Notice to Assessed Owners -
by Mail or Personal Service

Once the by-law is passed, the clerk can give notice to those specified in section 3 of the regulation.

The notice is given either by mail or personal service. The notice must go to all assessed owners of land according to the last revised assessment roll whose property:

- . is subject to the provisions of the zoning by-law
- . is within 120 metres of the area to which the zoning by-law applies

- . is more than 120 metres away in the following situation:



Mr. X owns both parcels A and B. The by-law affects parcel A only. The regulation states that every one within 120 metres must receive notice. In this situation Mr. X owns the adjacent 200 metres. Only he would receive notice. Provision 3-(1)(a)(iii) means the owner of parcel C would receive notice even though he is more than 120 metres away.

measuring
the distance

We recommend calculating the 120 m from the outer boundary of the area to which the by-law applies.

120 m
a minimum

It should also be remembered that 120 m is a minimum. It can be exceeded. Council can decide when it passes the by-law whether the 120 m should be exceeded and can direct the clerk accordingly.

3.4 Alternative Notice to Assessed Owners -
by Publication (section 3-(4) of the Regulation

Alternative notice gives municipalities an option when there are more than 100 assessed owners that would require notice of passing of the by-law under section 3-(1)(a).

optional
requirement

Municipalities can choose not to use the alternative notice requirement even when the number of assessed owners exceeds 100.

council
must direct
clerk

Council must direct the clerk if it wants alternative notice. This can be done by resolution at the same meeting when the by-law is passed.

The notice for publication is the notice in Form 1. There is no provision for an abridged Schedule 1 (copy of the by-law). Comprehensive zoning by-laws and longer, complicated zoning by-law amendments should be submitted to the Ontario Municipal Board for approval and not be processed under the regulation.

publica-
tion twice

The regulation states that the notice must be published once a week for two consecutive weeks in a newspaper having general circulation in the area to which the by-law applies. It does not necessarily have to be a daily newspaper. Weekly newspapers are acceptable provided that they are generally circulated in the local area affected.

caution -
cottage
areas

Council should use the alternative notice provision with some caution, particularly in cottage areas, where property owners may not have access to the local newspapers throughout the year.

The last date for objections will be 21 days after the printing of the first public notice.

3.5 Notice to Agencies

The notice requirements under section 3 of the regulation are similar to those in the Ontario Municipal Board's Rules of Procedure.

Some changes have been made, however, to ensure provincial agencies are informed of by-laws that may affect their interests.

Council should also remember that it can add to this notice list. If, for example, there are local special interest groups that may be affected by a proposed by-law, council can direct the clerk to give them notice.

3.6 Notice During Mail Disruptions

Section 3(3) of the regulation deals with mail disruptions. If there is a mail disruption within 3 days of notice being given by prepaid first-class mail, then the notice is considered to be mailed on the day the mail service begins again.

There are then 21 days after the date on which mail service begins again to lodge an objection.

4. OBJECTIONS AND THE ONTARIO MUNICIPAL BOARD

4.1 The Objection Period

There are 21 days to object to or to write a letter in support of the by-law. The regulation specifies that this period begins the day after the notice is mailed, delivered, or published (section 2(2) of the regulation).

If notice is given by publication, the notice is given twice. There are 21 days from the date of the first published notice for objections.

The regulation specifies that objections must be made to the clerk. Once the clerk receives objections, the by-law must be submitted to the Ontario Municipal Board. (Section 35(26) of The Planning Act.)

OMB rules
of
procedure

The submission to the Ontario Municipal Board is made in accordance with the Ontario Municipal Board's Rules of Procedure.

These rules are followed for all by-laws that are submitted to the Board. If you do not have a copy, these rules are available from:

Mr. K.C. Andrews
Secretary
The Ontario Municipal Board
180 Dundas Street West
Toronto, Ontario
M5G 1E5

It will not be necessary for the clerk to give notice again. However, all other provisions of the Board's rules including the completion of affidavits will have to be met.

objections
with
reasons

The regulation states that the objection must be accompanied by reasons. The municipal clerk, however, is to make no judgement on the validity of an objection if no reasons are included. The Board will review each objection and contact those objectors where more information is needed.

timing

Section 2(1) of the regulation states that the objection must be filed within 21 days. As discussed in section 3.6, where there is a mail disruption, the objection period begins the day after mail service is resumed.

filed	The word "filed" means received. The objection must be received by the clerk before the objection period expires or it is not valid.
last day not a holiday	The last date for objections must be a week day that is not a holiday.
	If a notice of objection is received, the Plans Administration Division of the Ministry of Housing (and the regional municipality where there is one) should be notified. The clerk should state the by-law number and give the objector's name when he informs the region or the Ministry of Housing.

5. THE BY-LAW COMES INTO EFFECT

5.1 General

Section 35(25) of The Planning Act states that the by-law "comes into effect" if notice is given in accordance with the regulations and no objections are received.

No building permits should be issued until the objection period has passed.

5.2 The Certificate

If a by-law is submitted to the Ontario Municipal Board for approval, the Board order is proof that the by-law has come into force.

Section 35(27) provides for a certificate of the clerk that is proof that the by-law has come into force and that the procedures prescribed in the regulations have been complied with.

sample
certificate

We have prepared a sample certificate for your information. The form of the certificate is not prescribed by regulation, but we do recommend the use of a certificate that is similar to this one.

This certificate is proof that the by-law is in effect and that the regulation has been complied with.

Certificate under section 35(27) of The Planning Act

I, hereby certify that the notice for By-law _____ of (name of municipal corporation), passed by the council of the Corporation on the _____ day of _____, 19 _____ was given in the manner and form and to the persons prescribed by regulation made by the Lieutenant Governor-in-Council under subsection 24 of section 35 of The Planning Act. I also certify that the 21 day objection period expired on _____ and to this date no notice of objection or request for a change in the provisions of the by-law has been filed by any person in the office of the clerk.

Dated this _____
day of _____, 19 _____.

Clerk

A certified copy of the certificate should be forwarded
to the:

(if applicable)

- | | |
|---|---|
| a) Ministry of Housing
Plans Administration Division
56 Wellesley Street West
8th Floor
Toronto, Ontario
M7A 2K4 | b) the chief planning officer
of the regional, district,
metropolitan municipality
or restructured county. |
|---|---|

The original certificate should be kept by the clerk as part of
the municipal records.

6. ADDITIONAL INFORMATION

For additional information or assistance contact:

- 6.1 Operations and Development Control Branch
56 Wellesley Street West
7th Floor
Toronto, Ontario M7A 2K4 Telephone: (416)965-6418

- 6.2 The Community Planning Advisory Branch in your area.

Central Region

2nd Floor
47 Sheppard Avenue East
Willowdale (Toronto)
M2N 2Z8
Telephone: (416)226-1855

South West Region

7th Floor
495 Richmond Street
London
N6A 5A9
Telephone: (519)673-1611

South East Region

3rd Floor
244 Rideau Street
Ottawa
K1N 5Y3
Telephone: (613) 233-9301

North West Region

435 James Street South
Thunder Bay
P7C 5G6
Telephone: (807)475-1651

North East Region

1191 Lansing Avenue
Sudbury
P3A 4C4
Telephone: (705)560-0120

